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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

BROOKDALE SENIOR LIVING
COMMUNITIES, INC.,

Defendant.

Case No.: 2:20-cv-00993-TLN-AC

CONSENT DECREE

I. INTRODUCTION

1. This action originated when Gwendolyn Grayson filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Ms. Grayson alleged that Brookdale Senior Living Inc. (“Brookdale”) discriminated against her in violation of Title VII of the Civil Rights Act of 1964, as amended, (Title VII) when it discharged her from her employment in retaliation for her complaints of race discrimination.

2. On July 18, 2019, the EEOC issued a Letter of Determination with a finding of reasonable cause to believe that Brookdale violated Title VII. Thereafter, EEOC and Brookdale

1 attempted to conciliate the charge, and conciliation was unsuccessful.

2 3. The EEOC filed this lawsuit on May 18, 2020, in the United States District Court for
3 the Eastern District of California, alleging that Brookdale violated Title VII when it discharged Ms.
4 Grayson in retaliation for statutorily protected activity.

5 4. Although Brookdale denies any wrongdoing and denies that it violated Title VII, the
6 parties want to conclude fully and finally all claims arising out of the EEOC's Complaint and Ms.
7 Grayson's charge of discrimination filed with the EEOC, without the burden, expense, and delay of
8 further litigation.

9 **II. JURISDICTION AND VENUE**

10 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
11 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII
12 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to
13 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

14 6. The employment practices alleged to be unlawful were committed within the
15 jurisdiction of the United States District Court for the Eastern District of California.

16 **III. SETTLEMENT SCOPE**

17 7. This Consent Decree is the final resolution of all allegations of unlawful employment
18 practices contained in Ms. Grayson's discrimination charge, in the EEOC's administrative
19 determination, and in the EEOC's Complaint filed in this lawsuit, including all claims by the parties
20 for attorney fees and costs.

21 8. No waiver, modification or amendment of any provision of this Consent Decree shall
22 be effective unless made in writing and approved by the Parties to this Decree, and any substantive
23 change, modification or amendment of any provision of this Consent Decree shall also require
24 approval by the Court.

25 9. This Consent Decree is not an adjudication or finding on the merits of the case.
26 Brookdale makes no admission of wrongdoing, and specifically denies that it violated any federal
27 law, and denies liability for any claim raised in this action. Brookdale enters into this Consent
28 Decree solely for the purposes of avoiding the expense and inconvenience of further investigation

1 and litigation.

2 **IV. MONETARY RELIEF**

3 10. In settlement of this lawsuit, Brookdale agrees to pay Ms. Grayson the total gross
4 amount of Eighty Thousand Dollars (\$80,000). On or before the date this Consent Decree is filed
5 with the Court, the EEOC shall have informed Brookdale in writing of Ms. Grayson's mailing
6 address and provide an IRS form W-9 completed by Ms. Grayson. Within fifteen (15) working days
7 of the entry of this Consent Decree, Brookdale will deliver two settlement checks in the amounts set
8 forth in subsections (a) and (b) of this paragraph to Ms. Grayson's mailing address by certified mail,
9 return receipt requested. Brookdale will provide proof of delivery of the settlement checks to the
10 EEOC within ten (10) days after the date on which delivery of those checks is complete. The two
11 settlement checks shall be made as follows:

12 a. Wages: Brookdale will deliver to Ms. Grayson a check in the amount of Six
13 Thousand Dollars (\$6,000) representing alleged lost wages. The check shall be reduced by any
14 applicable deductions for the employee's portion of FICA and by applicable federal and state income
15 tax withholdings related to the payment of employees' wages. Brookdale shall include a statement
16 of payments and deductions.

17 b. Compensatory Damages: Brookdale will deliver to Ms. Grayson a check in
18 the amount of Seventy-Four Thousand Dollars (\$74,000) representing alleged compensatory
19 damages. Brookdale will issue Ms. Grayson an IRS Form 1099 for this payment.

20 c. Defendant shall simultaneously transmit copies of the checks made payable to
21 Ms. Grayson, together with an accounting of the employee deductions and employer contributions
22 made, and tracking information for the delivery of the checks to EEOC-
23 SEFO_COMPLIANCE@eeoc.gov.

24 d. Brookdale will not condition the receipt of monetary relief on Ms. Grayson's
25 agreement to: (a) maintain as confidential the facts and/or allegations underlying her charge and
26 complaint and the terms of this Decree; (b) waive her statutory right to file a future charge with any
27 government agency; (c) refrain from reapplying for a job with Brookdale; and (d) a non-
28 disparagement and/or confidentiality agreement.

V. INJUNCTIVE AND OTHER RELIEF

A. General Provisions

11. Defendant, including its officers, agents, managers, supervisors, human resource employees and their successors and assigns are enjoined from engaging in practices that retaliate against individuals who engage in statutorily protected activity under Title VII. Consistent with its existing obligations under Title VII, Defendant shall institute the policies and practices set forth below at its senior living community located at 11550 Education Street, Auburn, California 95602 (the “Brookdale Auburn community”).

12. As to the Brookdale Auburn community, Defendant will provide prior written notice to any potential purchaser, or a purchaser of all or a portion of its assets, and to any other potential successor, about the allegations raised in the EEOC’s complaint, and the existence and contents of this Consent Decree.

B. Anti-Discrimination Policies and Procedures

13. Within (60) days from the date of entry of this Consent Decree and for its duration, Defendant shall review and revise as necessary its anti-discrimination policies and procedures that prohibit discrimination and retaliation, explain to employees their rights and responsibilities under Title VII, and are subject to periodic updating to reflect changes in anti-discrimination and anti-retaliation laws. Brookdale will state to its employees that the policies are promulgated at the direction of and with the endorsement by the highest level of Brookdale management. These policies and procedures shall be provided to the EEOC for review and comment no later than thirty (30) days prior to distribution. Within fourteen (14) days of receipt, the EEOC will advise Defendant of any comments. EEOC agrees to review the proposed policies and procedures in good faith. Thereafter, not later than sixty (60) days after the entry of this Consent Decree, Brookdale shall distribute a written copy of its anti-discrimination and anti-retaliation policies to all its management and non-management employees. These policies will also be distributed to every employee hired or re-hired during the duration of this Consent Decree.

14. Brookdale’s anti-discrimination and anti-retaliation policies shall contain specific provisions relating to Title VII, with special emphasis on its retaliation prohibitions. The policies

will provide a definition of retaliation and must include statements that retaliation against persons who make complaints of discrimination is strictly prohibited. Brookdale's anti-discrimination and anti-retaliation policy will also include, at a minimum, an express description of 1) what constitutes prohibited discrimination under Title VII and the protections afforded to individuals who engage in statutorily protected activity related to claims of prohibited discrimination, which may include applicants, employees, and former employees; 2) how its officers, agents, managers, supervisors, hiring/interviewing officials, and human resource personnel must respond to individuals who engage in statutorily protected activity; and 3) its obligation to educate its officers, agents, managers, supervisors, hiring/interviewing officials, and human resource personnel about how to respond to complaints of discrimination in a non-retaliatory manner.

15. Within (60) days from the date of entry of this Decree and for its duration, Brookdale shall adopt and implement policies and procedures that specifically advise all managers, supervisors, hiring officials, and human resource personnel of their duty to ensure compliance with its EEO anti-discrimination and anti-retaliation policies emphasizing the prohibition against retaliation. Brookdale shall impose discipline, up to and including termination of employment, upon any supervisor, manager, hiring official, or human resources personnel, who it determines discriminates or retaliates against any applicant, employee, or former employee.

16. If Brookdale modifies any of the policies or procedures identified in paragraph 13-14 above as a result of this review, it shall submit to the EEOC for its review and consideration the modified policies and procedures no later than thirty (30) days before adoption. Within fourteen (14) days of receipt, the EEOC will review the proposed modifications in good faith and advise Brookdale of any comments.

C. Equal Employment Opportunity Training

17. Not later than ninety (90) days after entry of this Consent Decree, and annually thereafter, Brookdale shall provide EEO training by a third party EEO consultant to managers, supervisors, and human resources personnel responsible for the Brookdale Auburn community and all employees at the Brookdale Auburn community, which will specifically cover Title VII and its retaliation provisions. Brookdale shall ensure that the training is developed by a third-party with

1 expertise in anti-harassment, anti-retaliation, and anti-discrimination matters. The trainings shall be
 2 aimed at helping attendees understand how to define and identify retaliation against applicants,
 3 employees, and former employees, and the steps Brookdale will take to address complaints of
 4 discrimination in a non-retaliatory manner. These trainings shall include detailed fact patterns,
 5 scenarios, and/or role plays to illustrate anti-retaliation principles including but not limited to
 6 “protected activity,” “opposition,” “reasonable belief,” “participation” in the legal process, “adverse
 7 actions” taken against those who engage in protected activity, the nexus between protected activity
 8 and adverse action, the legitimate reasons an employer may take action in an alleged retaliation
 9 scenario, and “pretextual” reasons that establish proof of a retaliation allegation. Training content
 10 shall also include information about retaliation against management officials who assert their
 11 obligation to address claims of retaliation and retaliation against individuals who participate in
 12 employer-initiated investigations. These trainings shall demonstrate Brookdale’s understanding of
 13 the correct employer responses to individuals who engage in such protected activity. The training
 14 may be by live presentation, on-line interactive training, computer training, or any combination of
 15 the foregoing and shall be no less than two (2) hours in duration. Training materials must be
 16 submitted to the EEOC at least thirty (30) days prior to the training session. Within fourteen (14)
 17 days of receipt, the EEOC will advise Brookdale of any comments. The EEOC agrees to review the
 18 proposed training materials in good faith, and will not attempt to require Brookdale to include
 19 training beyond the minimum threshold stated in this paragraph.

20 18. All costs of training shall be borne by Brookdale. Brookdale shall ensure that
 21 participants verify their participation and/or attendance to certify participation in and completion of
 22 such training, which it will retain for the duration of this Consent Decree.

23 19. Brookdale shall notify the EEOC in writing of the completion of the training by all
 24 required participants and shall specify the names and job titles of the personnel who participated in
 25 and completed the training. This information shall be provided as part of the report discussed in
 26 Paragraph 23 of this Consent Decree.

27 **D. Employee Records and Employment Reference**

28 20. Consistent with its existing policy, Brookdale shall provide a neutral job reference for

Ms. Grayson, verifying only her dates of employment and position held. This reference shall be provided via uConfirm. All employment verifications should be directed to www.uconfirm.com or (866) 312-8266 or fax (866) 607-9920.

21. Brookdale shall not disclose any information about or refer to Ms. Grayson's charge of discrimination or this lawsuit in responding to employment reference requests or other information requests about Ms. Grayson, unless required to do so by law or other legitimate business purposes.

22. Brookdale hereby certifies the personnel file of Ms. Grayson does not contain any reference to any charge of discrimination against Brookdale or this lawsuit.

E. Reporting

23. Brookdale shall submit a semi-annual report (the "Report") to the San Francisco District Office of the EEOC for a period of two (2) years, which shall be due every six months after the effective date of this Decree, and shall be delivered to the EEOC's dedicated compliance e-mailbox: EEOC-SEFO_COMPLIANCE@eeoc.gov. within five (5) working days of such due date.

a. The report shall contain the following information and attachments:

i. Certification that Brookdale has:

- (1) Maintained and/or updated its written EEO policies and procedures as described in Paragraphs 13-16;
- (2) Complied with the training provisions enumerated in Paragraphs 17-19 of this Consent Decree;
- (3) Complied with the Notice Posting provision of Paragraph 25 of this Consent Decree; and
- (4) Complied with all other provisions of this Consent Decree.

b. Copies of the following documents shall be included with the Report:

- i. a copy of the Company's EEO policy and procedures referenced in Paragraph 13 of this Consent Decree;
- ii. a sign-in sheet and/or verification form and/or list of the names and job titles of Brookdale's personnel who completed EEO training in connection with this Consent Decree

1 and the dates such personnel; participated in such training; and

2 iii. a report of the resolution of each internal formal or informal retaliation
3 complaint made by employees or applicants, including:

4 (1) identification of all individuals involved, including their titles
5 and work locations;

6 (2) the particulars of the complaint;

7 (3) a summary of the investigation;

8 (4) the company's determination and any remedial action taken;

9 (5) name(s) and title of individual(s) who received, investigated
10 and or otherwise addressed and or took action based on the
11 complaint; and

12 (6) upon request, the home address, home and cell phone numbers,
13 and e-mail address for any complainants.

14 24. If applicable, Brookdale shall submit a statement with the Report to the EEOC
15 specifying the areas of noncompliance with the Consent Decree, the reason for the noncompliance,
16 and the steps that were or shall be taken to bring Brookdale into compliance.

17 **F. Posting**

18 25. Brookdale shall post a Notice to All Employees. This Notice is attached as Exhibit A
19 to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at the
20 Brookdale Auburn community for the duration of the Consent Decree.

21 **VI. ENFORCEMENT**

22 26. If the EEOC determines that Brookdale has not complied with the terms of this
23 Consent Decree, the EEOC shall provide written notification of the alleged breach to Brookdale.
24 The EEOC shall not petition the Court for enforcement of this Consent Decree for at least twenty
25 (20) days after providing written notification of the alleged breach. The 20-day period following the
26 written notice shall be used by the EEOC and Brookdale for good faith efforts to resolve the dispute.

27 **VII. RETENTION OF JURISDICTION**

28 27. The United States District Court for the Eastern District of California in Sacramento

1 shall retain jurisdiction over this matter for the duration of this Consent Decree for enforcement
2 purposes.

3 **VIII. DURATION AND TERMINATION**

4 28. This Consent Decree shall be in effect for two (2) years from the date of entry of the
5 Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds
6 Brookdale to be in violation of the terms of the Consent Decree, the Court may extend the duration
7 of this Consent Decree.

8 Respectfully submitted,

9 Dated: May 20, 2020

10 BY: /s/ Roberta L. Steele

11 Roberta L. Steele
12 Regional Attorney

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18 *Attorneys for Plaintiff EEOC*

19
20 Dated: May 20, 2020

21 BY: /s/ Barry A. Hartstein (as authorized on 5/20/2020)

22 Barry A. Hartstein

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27 *Attorneys for Defendant BROOKDALE SENIOR LIVING*
28

NOTICE TO



EMPLOYEES

On ____, 2020, Brookdale Senior Living and the Equal Employment Opportunity entered into an agreement to strengthen Brookdale's equal employment efforts regarding employees at the Brookdale Auburn community. This Notice is to remind all Brookdale Auburn employees of their rights and responsibilities.

Unlawful Discrimination or Harassment. Under federal law, it is unlawful for an employer to discriminate or engage in harassment based on race, color, religion, sex, national origin, disability or age (40 or over). This means that a supervisor or manager cannot make decisions about hiring, promotion, pay or other conditions of employment, based on race, color, religion, sex, national origin, disability or age (40 or over).

Unlawful Retaliation. It also is unlawful to discriminate, harass or retaliate against any individual who reports or complains about what he or she believes to be unlawful discrimination based on race, color, religion, sex, national origin, disability or age (40 or over).

Reporting Improper Conduct. If you are aware of any events, conduct, or information, which you believe may indicate some improper discrimination, harassment or retaliation, it is very important that you report the information so the necessary steps may be taken to investigate, identify, and promptly remedy any problems. You may report such improper conduct to any of the following:

- Reporting to Brookdale: Any individual who feels he or she has been treated unfairly or is the subject of discrimination or retaliation based upon his or her protected class should immediately report the matter to the attention of any of the following: Department Manager or Executive Director, Regional or Senior Human Resources Business Partner, District Director of Operations, Regional Vice President of Operations, Vice President of Human Resources, Executive Vice President/Chief People Officer, or the Brookdale Integrity Line at (888)302-3303 or online at brookdale.ethicspoint.com.
- Employees have the right to bring complaints of discrimination or harassment to the U.S. Equal Employment Opportunity Commission. The EEOC may be reached by telephone at : (800) 849-4230; TDD: (515) 625-5610; ASL Video Phone: (800) 234-5122, Email: info@ask.eeoc.gov; or via its website at www.eeoc.gov

You also can contact the EEOC offices at 1301 Clay Street, Suite 1170-N, Oakland, CA 94612; 450 Golden Gate Avenue, 5th Floor West, San Francisco, CA 94102; 96 North Third Street, Suite 250, San Jose, CA 95112; or 2500 Tulare Street, Suite 2601, Fresno, CA 93721

This Notice must remain posted and may not be altered, defaced and/or covered by any other material. Any questions concerning this notice and/or compliance with its terms may be directed to the EEOC's San Francisco District Office at the address and telephone number listed above.